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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**Civil Writ Petition No. 5704 of 1999**
**Date of Decision : 23.8.2007**

**M/s PML Industries Limited and another ....Petitioners**

**Versus**

**The Regional Provident Fund Commissioner, Punjab and another**

**...Respondents**

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL**

Present: Mr. Anuj Raura, Advocate the petitioners

Mr. Kamal Sehgal, Advocate for the respondents.

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**RAJESH BINDAL, J.**

Challenge in the present writ petition is to orders passed by the authorities under Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ( for short “the Act”) assessing a sum of Rs. 1,76,024/- as provident fund due from the petitioner from September 1997 to October, 1998 vide order dated March 1, 1999 (Annexure P-10); notice dated March 26, 1999(Annexure P-11) requiring the petitioner to comply with the provisions of the Act and to deposit the provident fund contributions from November, 1998 to February, 1999 and further communication dated April 16, 1999 (Annexure P-12) requiring recovery of assessed provident fund dues in the manner specified in Section 8-B to 8-G of the Act.

The sole grievance raised by learned counsel for the petitioner to challenge the impugned demand is that in terms of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 ( for short 'the 1985 Act') during the pendency of a reference before the Board of Industrial and Financial Reconstruction (for short “the BIFR”), no recovery of provident fund dues can be effected from the petitioner. He submitted that reference made by the petitioner was registered at No.346 of 1998 with the BIFR.

As only legal issue arises in the present petition for

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consideration of this Court, the admitted facts mentioned above are sufficient.

An identical issue has been gone into by a Division Bench of this Court in **Sobhag Textile Ltd., Faridabad Vs. The Regional Provident Fund Commissioner, Haryana and another 2000(3) RSJ 178,** wherein it was held as under:-

> "6.For the purpose of deciding the question as to whether the notice issued under Section 8-B of the 1952 Act for recovery of the arrears is barred by Section 22 of the 1985 Act, it will be useful to refer to these provisions. The same read as under:
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> "Section 8-B of the 1952 Act 8-B Issue of certificate to the Recovery Officer-
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> (1)Where any amount is in arrear under Section 8 the authorised officer may issue, to the Recovery Officer, a certificate under his signature specifying the amount of arrears and the Recovery Officer, on receipt of such certificate, shall proceed to recover the amount specified therein from the establishment or, as the case may be, the employer by one or more of the modes mentioned below:
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> (a) attachment and sale of the moveable or immovable property of the establishment or as the case may be, the employer;
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> (b) arrest of the employer and his detention in prison;
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> (c ) appointing a receiver for the management of the moveable or immovable properties of the establishment or as the case may be the employer;
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> Provided that the attachment and sale of any property under this section shall first be effected against the properties of the establishment and where such attachment and sale is insufficient for recovering the whole of the amount of arrears specified in the certificate, the Recovery Officer may take such proceedings against the property of the employer for

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recovery of the whole or any part of such arrears.

(2)The authorised officer may issue a certificate under Sub-section(1) notwithstanding that proceedings for recovery of the arrears by any other mode have been taken."

"Section22(1) of the 1985 Act.

Section 22 Suspension of Legal Proceedings, contracts etc.

(1)Where in respect of an industrial company, an inquiry under Section 16 is pending or any scheme referred to under Section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under S.25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act 1956, or any other law or the memorandum and articles of association of the Industrial Company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a Receiver in respect thereof shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority."

7. The 1985 Act contains a non-obstante clause and, therefore, the provisions contained therein will ordinarily prevail over the provisions of the 1952 Act if there inconsistency between the two statutes but an analysis of Section 22 of the 1985 Act shows that it does not operate as an impediment against the recovery of the arrears of provident fund under Section 8-B of the 1952 Act. What Section 22 does is to suspend the legal proceedings like the winding up of the industrial company execution, distress or the like against the properties of the

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industrial company. A plain reading of Section 22 shows that it does not contain any bar against the adoption of coercive measures embodied in Section 8-B of the Act. Therefore, we are unable to agree with Shri Mahesh Grover that in view of the pendency of the proceedings before the BIFR, the respondents should be restrained from executing the impugned notice." (emphasis supplied).

To similar effect is the judgment of Calcutta High Court in **Universal Paper Mills Limited and others Vs. Regional Provident Fund Commissioner and others (2001) 106 Company Cases 518,** wherein it was held as under:-

"Apart from that the further question arose whether a sick industrial company can claim the benefit of the provisions of section 22 in respect of the dues payable towards provident fund under the Employees' Provident Funds Act, 1952. It further appears from the records that the matter was placed before the BIFR in the year 1990. The amount was to be paid by the petitioner-company being the contributions of the employer which have not been paid by the employer and the same have been unlawfully retained by the employer.

The Supreme Court has held in *Deputy Commercial Tax Officer Vs. Corromandal Pharmaceuticals* (1997) 89 Comp Cas 1 : AIR 1997 SC 2027, that Section 22(1) of the Act can apply only to such dues recognised or included in the sanctioned scheme, and the amounts which have been collected by the sick industrial company on account of sales tax etc., after the date of the sanctioned scheme legitimately belonging to the Revenue, cannot be and could not have been intended to be covered within section 22 of the Act. The Supreme Court has specifically held that any other construction will be unreasonable and unfair and will lead to a state of affairs enabling the sick industrial unit to collect amounts due to the Revenue and withhold it indefinitely and unreasonably. Such a construction which is unfair, unreasonable and against the

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spirit of the statute in a business sense, should be avoided.

After considering the judgments cited before me I do not have any hesitation to hold that the company has no right to take shelter under section 22 in respect of statutory liabilities and the employees are entitled to have their statutory benefits under the Employees' Provident Funds Act and thereby any default on the part of the employer under the said Act cannot attract the said section or can get away taking an advantage out of the said section and accordingly, in my opinion the purpose and object of section 22 cannot be interpreted in a manner to give a shelter to the petitioners against the orders passed by the respondent authorities.

Accordingly, I am of the view that section 22(1) of the SICA Act, 1985 would not be of any assistance to the petitioner in the facts and circumstances of this case having regard to the nature of the payments required by way of provident fund and other contributions under the said Act and I do not find any substance in this application and the same is rejected." (emphasis supplied).

Andhra Pradesh High Court in **Sarvaraya Textiles Ltd. Vs. Commissioner, Employees' Provident Fund and others (2001) 107 Company Cases 343** had also gone into an identical issue and held as under:-

"From the circumspection of the judgment of the apex court, it has to be held that the payment of earned wages could not have been within the purview of section 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, and that the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985, must be held to apply only to such proceedings which are not required for the day-to-day running of the sick industrial company. Section 22 (1) had been amended by Parliament in 1993 to expand its scope. The object of section 22 was to ensure that the attempts at revival of a sick industrial company are not rendered nugatory by

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predatory creditors nibbling away at the capital and other assets of the industrial company which is being revived. Hence, it should be held that section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985, must be reasonably construed to refer to only those proceedings which are not required for the day-to-day operation of the company. The payment of earned wages is clearly required for the day-to-day operation of the company and, therefore, a proceeding for the recovery of earned wages would not fall within the purview of section 22(1). Hence, it has to be held that it is not open to the petitioner to take shelter of section 22(1) of Sick Industrial Companies (Special Provisions) Act, 1985, in respect of contributions made by the workers towards employee's provident fund. The petitioner company having deducted the contribution from the wages of the workers cannot withhold the same without paying into the provident fund of the workers. Hence, certainly the workers are entitled to be paid their contributions and other statutory benefits. Viewing from article 21 of the Constitution of India, it is the workers' fundamental right to get their benefit under the provisions of the EPF Act. As such, payment of wages and terminal benefits is a part of the right to life and consequently in enacting section 22(1) of the Sick Industrial Companies (Special provisions) Act, 1985, Parliament could not have contemplated that these dues, which were part of the right to livelihood of the workmen under article 21 should not be recovered. It should also be noted that the provident fund and other dues payable under the provisions of the EPF Act, 1952 are part of the legitimate statutory settlements of the workers. The employer is obligated to pay the contribution to the fund, which is set up under the Act. The contribution of the employees is, in fact, a deduction from the wages which are due and payable to the employees. The deduction which is made from the wages is required to be deposited into the fund

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by the employer. These contributions belong to the employees. The employees are entitled to those contributions and can draw upon them even while they are in service for meeting the unforeseen eventualities and exigencies that may arise in the life of an employee. They constitute an important measure of social security. The circumstances in which withdrawals and advances can be given to an employee in service are specified in the scheme. No industrial undertaking can work or operate without the work, which is rendered by the employees. The payment of provident fund dues to the fund, therefore, stands on the same footing as the payment of wages, which is due to the employees. There can be no doubt that it is an entitlement to which the employees are entitled by dint of the work, which they have put in. These are dues which are payable whether or not as undertaking is sick. They constitute an intrinsic part of the employees' right to life under article 21 of the Constitution. Hence, this court is of the view that the recovery of provident fund and other dues under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 does not fall within the scope and purview of section 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985."(emphasis supplied).

Following judgment of Bombay High Court in **Ralliwolf Ltd. V. Regional Provident Fund Commissioner**, **(2001) 1 LLJ 1425,** the Orissa High Court in **Industrial Development Corporation Orissa Limited and another Vs. Regional Provident Fund Commissioner and others (2002) 112 Company Cases 527,** considering an identical issue opined as under:-

"In the context and the purpose for which section 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 is enacted, as could be apparent from the discussions made in the decision of the apex court in *Tata Davy Ltd.'s case* (1998) 93 Comp Cas 1 to keep the proceedings for the winding up or for execution distress or the like against any of the properties of the sick industrial company or for appointment of a receiver in

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respect thereof under suspension till the proceeding before the BIFR or AAIFR under section 25 thereof are pending in the absence of the consent of such authorities. In other words, to protect a sick industrial company from further ruin financially from the creditors seeking to recover their dues from such sick industrial unit. The recovery remains deferred, but the creditors' remedy is protected for the period of deferment by reason of sub-section (5) of section 22, which provides exclusion of that period from the computation of the period of limitation. The framers of the provision, Parliament could never have contemplated to defer the payment of due wages or the like to the workmen serving in those sick companies indefinitely till the proceeding before the authorities under the Act are completed may be after years. The workers or the employees of a company, who are members of the fund under the Employees' Provident Funds Act contribute their share to the fund and such share is deducted from their salary which would otherwise mean that it is a part of salary or the wages of such employees and the other half, matching the employees' contribution is required to be paid by the employer company to the fund. In such view of the matter, the provident fund, etc. dues of a workman or an employee in the company are a part of the legitimate wages. Such employees cannot be deprived of their legitimate statutory dues by way of provident fund entitlements. Wages are paid to its workers for day-to-day running of the business, and the business, otherwise cannot run without workers. It can never be construed as the purpose or intention of the enactment, to deprive or defer the payment of wages to an employee during which the company becomes sick and a scheme remains pending with the BIFR or in an appeal as against the decision of the BIFR, before the appellate authority. It is in this context, the provision of section 22(1) of the SIC Act has to be construed and so construed it has to be held that the statutory dues of an employee covered under the

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provident fund scheme, which is a part of his legitimate claim of wages are not intended to be indefinitely deferred under sub-section (1) of section 22 of the Act. A similar view is taken by a learned single Judge of the Bombay High Court in *Ralliwolf Ltd. V. Regional Provident Fund Commissioner (supra).*" (emphasis supplied).

Consistent view of various High Courts including this Court being available on the question of law sought to be raised by the petitioner in the present writ petition, I have no hesitation to hold that action on the part of the respondents for recovery of provident fund dues from the petitioner during the pendency of a reference before the BIFR is strictly in conformity with the law and the petitioner is not entitled to any protection under Section 22 of the Act.

Before parting with the judgment a reference to the interim order dated 4.6.1999 passed by this Court, at the time of admission of this writ petition, would be relevant, the same reads as under:-

> "The respondents are restrained from realising the amount determined under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. However, it is made clear that in the event of dismissal of the writ petition, the petitioner shall have to pay/deposit the amount of provident fund etc. along with interest at the rate of 18% from the date of the impugned order."

In view of the dismissal of the writ petition, in terms of condition attached for grant of interim order to the petitioner, respondents shall be entitled to recover the amount with interest at the rate of 18% from the date of impugned order.

Accordingly, the writ petition is dismissed with above observations for recovery of interest with no order as to costs.

**August 23, 2007** **(Rajesh Bindal)**
**Pka** **Judge**

**(**Refer to reporter.)

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